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7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3203

13 ADRIAN IRIARTE
1524 21st Street
Oceano, CA 93445

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 62634

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about August 22, 2005, the Board of Pharmacy (Board) issued
22 Pharmacy Technician Registration No. TCH 62634 to Adrian Iriarte (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on July 31, 2009, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the
27 following laws. All section references are to the Business and Professions (Code) unless
28 otherwise indicated.

STATUTORY PROVISIONS

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2 1. Section 118, subdivision (b), of the Code provides that the suspension,
3 expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to
4 proceed with a disciplinary action during the period within which the license may be renewed,
5 restored, reissued or reinstated.

6 2. Section 4301 of the Code states:

7 "The board shall take action against any holder of a license who is guilty of
8 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
9 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
10 following:

11

12 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
13 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
14 otherwise, and whether the act is a felony or misdemeanor or not.

15

16 "(l) The conviction of a crime substantially related to the qualifications, functions,
17 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
18 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
19 substances or of a violation of the statutes of this state regulating controlled substances or
20 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
21 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
22 The board may inquire into the circumstances surrounding the commission of the crime, in order
23 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
24 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
25 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
26 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
27 meaning of this provision. The board may take action when the time for appeal has elapsed, or
28 the judgment of conviction has been affirmed on appeal or when an order granting probation is

1 made suspending the imposition of sentence, irrespective of a subsequent order under Section
2 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
3 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
4 or indictment. . . .”

5 **REGULATORY PROVISIONS**

6 3. California Code of Regulations, title 16, section 1770, states:

7 "For the purpose of denial, suspension, or revocation of a personal or facility
8 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
9 Code, a crime or act shall be considered substantially related to the qualifications, functions or
10 duties of a licensee or registrant if to a substantial degree it evidences present or potential
11 unfitness of a licensee or registrant to perform the functions authorized by his license or
12 registration in a manner consistent with the public health, safety, or welfare."

13 **DANGEROUS DRUGS/CONTROLLED SUBSTANCES**

14 4. "Marijuana" is a Schedule I controlled substance as defined in Health and
15 Safety Code section 11054, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
16 Business and Professions Code section 4022.

17 5. Section 125.3 of the Code states, in pertinent part, that the Board may
18 request the administrative law judge to direct a licensee found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Conviction of a Substantially Related Crime)**

23 6. Respondent is subject to disciplinary action under section 4301,
24 subdivision (l), of the Code, in conjunction with California Code of Regulation, title 16, section
25 1770, in that Respondent was convicted of a crime substantially related to the qualifications,
26 functions or duties of a licensed pharmacy technician, as follows:

27 a. On or about October 31, 2006, Respondent was convicted by the Court on
28 a plea of nolo contendere for violating Health and Safety Code section 11375(a) (possession of

1 concentrated cannabis), a misdemeanor, in the criminal proceeding entitled *The People of The*
2 *State of California v. Adrian Iriarte* (Super. Ct. San Luis Obispo County, 2006, No. F388104).
3 Respondent was placed on 3 years of probation and ordered to 60 hours of volunteer community
4 work service. The circumstances surrounding the conviction are that on or about May 10, 2006,
5 the San Luis Obispo Police stopped Respondent for driving his vehicle erratically. During a
6 vehicle search, a one half pound of marijuana was discovered behind the seat of Respondent's
7 vehicle. Respondent was placed under arrest. Respondent submitted a letter to the Board stating
8 he would surrender his pharmacy technician license.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dishonest Acts)**

11 7. Respondent is subject to disciplinary action under section 4301,
12 subdivision (f), on the grounds of unprofessional conduct in that on or about May 10, 2006,
13 Respondent committed an act involving dishonesty. Complainant refers to, and by this reference
14 incorporates, the allegation set forth above in paragraph 6, subparagraph (a), inclusive, as though
15 set forth fully.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein
18 alleged, and that following the hearing, the Board issue a decision:

19 A. Revoking or suspending Pharmacy Technician Registration Number
20 TCH 62634, issued to Respondent;

21 B. Ordering Respondent to pay the Board the reasonable costs of the
22 investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3; and,

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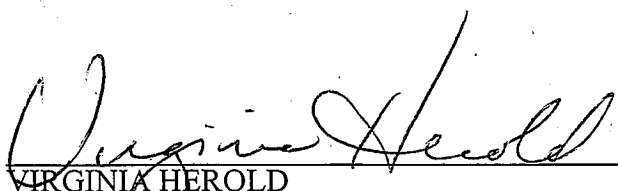
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C. Taking such other and further action as deemed necessary and proper.

DATED: 11/12/08



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant